

No. 87-1535

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Supreme Court, U.S.

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In The
Supreme Court of the United States
October Term, 1987

**JOHN HANCOCK VARIABLE LIFE
INSURANCE COMPANY,**

Petitioner,

v.

LOIS ANNETTE PIERCE,

Respondent,

**OBJECTION TO PETITION
FOR WRIT OF CERTIORARI**

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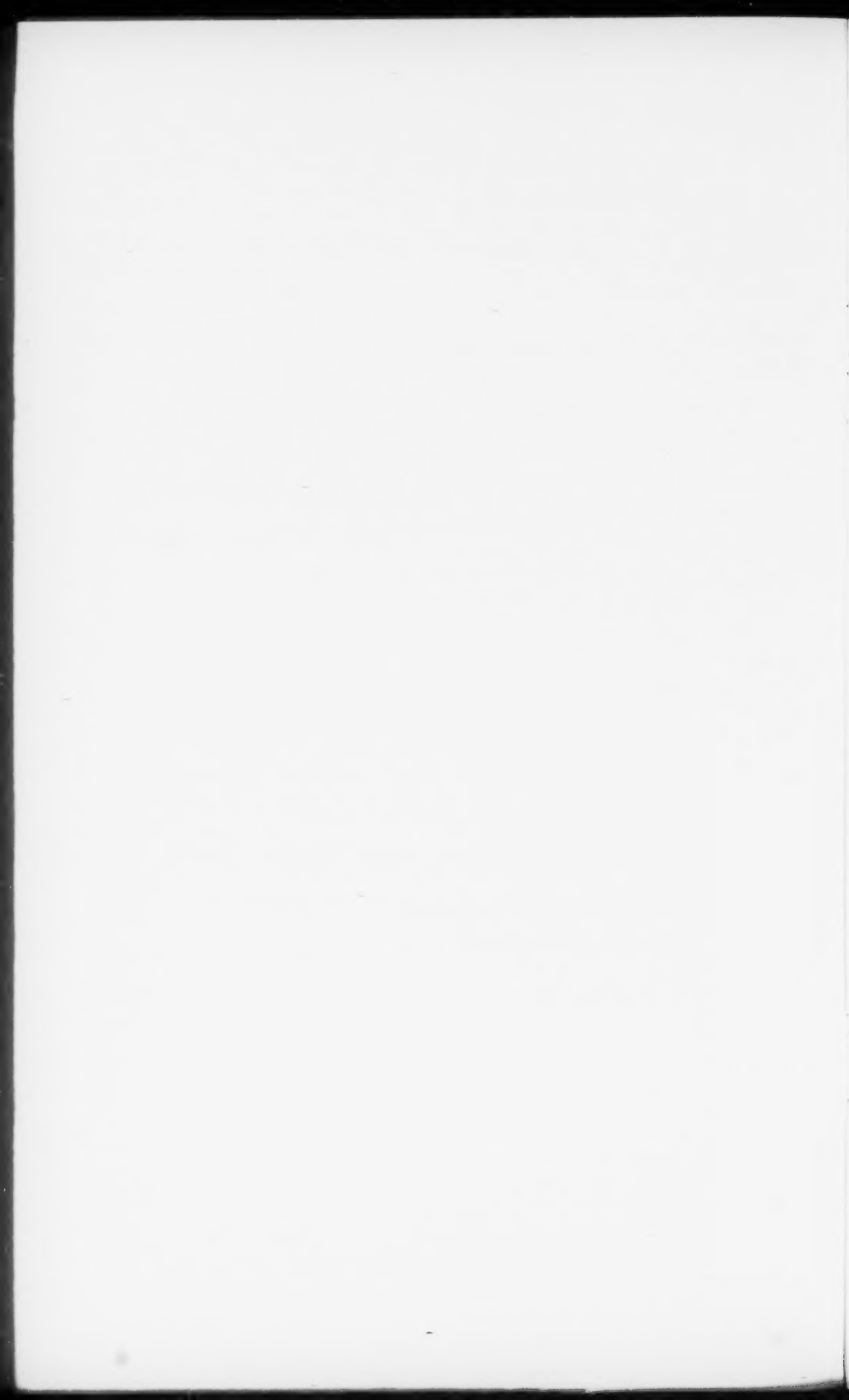
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STATEMENT OF THE CASE

In 1983, Curtis Bullock (hereinafter referred to as "Bullock"), was a soliciting agent for John Hancock Variable Life Insurance Company (hereinafter referred to as "John Hancock") and was authorized in that capacity to solicit applicants for insurance; to see that the applications were filled out with the information given to him by the applicant and to submit these applications to John Hancock for approval or rejection (RT, p.29).

On April 5th, 1985, Bullock came to the home of Glen D. Pierce (hereinafter referred to as "Mr. Pierce") and Lois

Pierce (hereinafter referred to as "Mrs. Pierce") and convinced them to cancel \$110,000.00 in other life insurance policies, which policies had been in effect for approximately seven to eleven years on the life of Mr. Pierce and to in turn apply for a new policy in the amount of \$200,000.00 from John Hancock. Bullock asked them certain questions from a non-medical application form, Part B, (Plaintiff's Exhibit 1-A) (CR, p. 33) concerning the health of Mr. Pierce and any prior problems or treatment that he had had.

Mr. and Mrs. Pierce both told Bullock in response to these questions that his health was not good since in the past he had had some chest pains, some breathing problems, diverticulitis, some alcoholic problems, as well as being treated by various doctors and hospitals. Even though Bullock read out each one of the questions on the non-medical application, had Mr. Pierce sign the form, dated it April 5th, 1983 and Bullock witnessed it, Bullock did not list any of the answers concerning the health problems which were told to him by Mr. and Mrs. Pierce (RT, p. 49).

In fact, Bullock told them that if all these problems were cleared up that's all that mattered and "*what they don't know wouldn't hurt them.*" He also told Mr. and Mrs. Pierce that if all of these problems were cleared up, Mr. Pierce did not have to mention them to anybody because he had told Bullock and that was all that mattered since he represented John Hancock (RT, p. 49). Bullock told Mr. and Mrs. Pierce that he (Mr. Pierce) would have to have a physical by Dr. Allen but as long as they had told him (Bullock) about these problems, he represented John Hancock and there was no point in discussing them with Dr. Allen at the physical (RT, p. 73).

On receiving the application for insurance, John Hancock wrote to Ochsner Clinic and received a letter

report concerning the Plaintiff's health dated August 13, 1982 (CR, p. 196). In this report, Dr. Philip C. Young of the Ochsner Clinic pointed out that Mr. Pierce suffered from various problems and had been treated for them. These same medical problems were not listed on the medical application filled out by Dr. Allen and identified as Plaintiff's Exhibit No. 1-B. John Hancock admitted that before the said policy was approved for issuance it knew from examining the Ochsner's report and Dr. Allen's report that most of the information listed on Dr. Allen's report was incorrectly answered (RT, p. 133-135, but still issued the policy (CR, p. 231). John Hancock neglected to write to the personal physician of Mr. Pierce for any clarification until after Mr. Pierce died (CR, p. 434).

REASONS FOR DENYING THE PETITION

The question which John Hancock attempts to raise is whether the award of punitive damages in this case against John Hancock for the fraudulent acts of its agent, Bullock, violates the Constitution of the United States and particularly Amendments V, VI, and XIV.

By applying the well established standards for granting certiorari, the Respondent would submit that this petition should be denied because:

1. This particular question was not presented to or considered by the court below at any stage;
2. The alleged decision below is not in conflict with any other decision, State or Federal;
3. The alleged decision below is not inconsistent with prior decisions of this Court;

4. It is not essential that the Court resolve these constitutional questions now — indeed, it would be inappropriate to do so because the Legislature of Alabama has already considered and imposed solutions under the Tort Reform Act passed in June, 1987.

It is virtually undisputed that John Hancock did not cite or rely on any question of the Due Process Clause regarding punitive damages imposed upon it because of the actions of its agent at any state of the proceedings below. This Court has repeatedly said that it cannot and will not “*decide Federal Constitutional issues raised here for the first time on review of State Court decisions.*” *CARDINALE V. LOUISIANA*, 394 U.S. 437, 438 (1969); *DISTRICT OF COLUMBIA COURT OF APPEALS V. FELDMAN*, 460 U.S. 462, 482 (1983); *WEBB V. WEBB*, 451 U.S. 493, 499 (1981); *WILSON V. COOK*, 327 U.S. 474, 483-484 (1946).

The only issue raised by John Hancock in the prior proceedings was whether “*the award of punitive damages in civil proceedings in Alabama violates the Constitution of Alabama and the Constitution of the United States.*” Under this general statement, John Hancock chose to argue that punitive damages under Alabama Civil Procedure were criminal in nature and therefore violated its constitutional rights as to (A) self incrimination, (B) standard of proof beyond a reasonable doubt, (C) double jeopardy, (D) certainty in standard of conduct, and (E) certainty in standard of penalty. At no time did John Hancock ever contend that the imposition of punitive damages on it because of the actions of its agent, Bullock, deprived it of its due process rights under the Constitution of the United States.

It is conceivable that John Hancock could argue that the question which it now raises for the first time is merely an "enlargement" of its arguments made below and therefore it can come under the "*mere enlargement*" doctrine as set out in DEWEY V. DES MOINES, 173 U.S. 193 (1899). However, in the lower court, DEWEY, unsuccessfully argued that a tax assessment on lots owned by him as a non-resident, was "*the imposition of a personal liability against him in excess of the value of all the lots and therefore was not due process*" in violation of the 14th Amendment. In the Supreme Court he attempted to raise the related question of whether the assessment itself amounted "*to a taking of property without due process of law*", because the assessment exceeded the value of the property. This Court rejected that attempt finding that DEWEY'S second due process question was not a mere "*enlargement*" of the due process question he had raised before even though he had specifically alleged all of the "*facts upon which the (second) question might have been raised*", and even though he had specifically relied upon the Federal Due Process Clause in support of the question he did raise below.

Furthermore, the Petition should be denied because it is not essential that this Court resolve any such constitutional question at this time since most of these issues have been solved by the Alabama Legislature in its Tort Reform Act which became effective on June 11, 1987 (1987 Ala. Acts 185). Although the Tort Reform Act expressly states that it does not affect the rights of any person if such rights accrued prior to the effective date of the Act and therefore it would not apply to this present case, it does solve many, if not all these questions in the future. Some of the pertinent areas affected by the provisions of the Act include the following:

- (A) Punitive damages may not be awarded in any civil action unless the standard of proof is by clear and

convincing evidence that the Defendant consciously and deliberately engaged in oppression, fraud, wantonness or malice (1987, Alabama Acts 185, Sec. 1);

- (B) There is a cap placed on punitive damages in the amount of \$250,000.00 unless the Plaintiff can prove one of three extremely difficult exceptions;
- (C) A principal shall not be vicariously liable for punitive damages unless he or it either: (1) has knowledge of the unfitness of the agent, servant or employee; (2) fails to properly instruct the agent, servant or employee with a disregard of the rights or safety of others; (3) authorized or ratified the wrongful conduct; or (4) derived a benefit from the action of the agent, servant or employee. The Act goes on further to say that a Plaintiff may not recover punitive damages against a principal, master or employer (the Plaintiff) if he knowingly participated with the agent, servant or employee to commit fraud or wrongful conduct with full knowledge of the import of this Act.

In essence, it would appear that the Tort Reform Act limits punitive damages and particularly limits them in such areas of which John Hancock now complains where it was held liable for the acts of its agent, acting within his line and scope of his authority as such. Bullock was authorized to solicit applications, receive information and fill out applications. He did just that but recklessly or intentionally failed to write down the correct information. The Tort Reform Act further provides that a principal is held liable for its agent's conduct if the agent's conduct was "*calculated to or did benefit the principal . . .*" John Hancock certainly cannot contend in this situation that the act of Bullock

Bullock in soliciting and accepting applications for insurance was not calculated to benefit John Hancock since it was in the business of selling life insurance policies and collecting premiums.

John Hancock has urged this Honorable Court to issue this Petition of Certiorari to the Supreme Court of Alabama to "*preserve the issues herein pending this court's opinion in BANKER'S LIFE*". To the contrary on examination of the issues presented in *BANKER'S LIFE & CASUALTY CO. V. CRENSHAW*, No. 85-1765, now on appeal, it is clearly seen that none of the issues in that particular case involved punitive damages awarded against a principal for the fraudulent acts of its agent.

This is simply a last ditch attempt by John Hancock to delay the payment of life insurance benefits which were due to Mrs. Pierce in 1983 and which John Hancock has wrongfully withheld for approximately five years. John Hancock has retained and invested the sum of \$200,000.00 for this period of time and has probably collected enough interest to more than pay the punitive damages awarded.

CONCLUSION

For the reasons stated above, the Respondent, LOIS ANNETTE PIERCE, would respectfully urge this Honorable Court to deny the Petition for a Writ of Certiorari as filed by the Petitioner, John Hancock.

Respectfully submitted,

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